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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/731,232

12/09/2003

Isabel Quistian JR.

RYAN-001

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7590

01/10/2008

LAW OFFICE OF ALAN W. CANNON

942 MESA OAK COURT

SUNNYVALE, CA 94086

EXAMINER

GRAHAM, GARY K

ART UNIT

PAPER NUMBER

3723

MAIL DATE

DELIVERY MODE

01/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/731,232

Applicant(s)

QUISTIAN, ISABEL

Examiner

Gary K. Graham

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 15-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 20 December 2007 has been entered.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the second scrubbing means comprising a contoured top surface, the first scrubbing means comprising a parabolically contoured surface and the first scrubbing means comprising a hyperbolically contoured surface must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mentges (German patent 29900194) in view of Ernst (GB patent 1,290,401).

The patent to Mentges discloses the invention substantially as is claimed. Mentges discloses a device for cleaning feet (see figure) in the bath tub or shower that includes a base portion (not numbered but identified by the term unterteil) with a pair of side walls (not numbered but identified by the term seitenteil) extending upwardly therefrom and having open end portion extending between ends thereof. A first scrubbing means in the form of bristles (5,6,7) are mounted on inner wall surfaces of said side walls and second scrubbing means in the form of bristles (5,6,7) are mounted on an upper surface of the base portion and extend between the first scrubbing means. Suction cups (not numbered but identified by the term saugnapfe) extend from a bottom surface of the base portion for attaching the device to a surface.

The patent to Mentges discloses all of the above recited subject matter with the exception of a bar of soap provided on a material support which is biased with respect to the base portion to a height above a top level of the second scrubbing means to make contact with a users foot.

The patent to Ernst discloses a body cleaning device (figs.1,2) for use in showers that includes scrubbing bristles (2) extending from a base portion (1) and a bar of soap (4,19) supported on a movable material support (3,13) amid the bristles. The support is biased by spring(s) (5,15) away from the base portion to extend the soap to a height from the base portion higher than the bristles. Such ensures that the soap can, independently of the degree to which the soap has been consumed, make contact with a user's body. Ernst discloses combining of the soap and cleaning device such that separate manipulation of soap is not required.

It would have been obvious to one of skill in the art to provide the device of Mentges with a cleansing material support with bar soap thereon biased from the base of the device to extend from the base higher than the bristles, as clearly suggested by Ernst, to eliminate separate manipulation of soap with the foot to be cleaned. Note that Mentges can be modified as suggested by either of figures 1 or 2 of Ernst.

With respect to claim 2, note that in figure 1 of Ernst, the material support extends to a level slightly lower than a top surface of the scrubbing means from in which it is provided. In figure 1, the scrubbing means or bristles abut the soap and aid to prevent sliding of the soap as claimed. Thus, modifying the device of Mentges as disclosed by figure 1 of Ernst will result in the structure as claimed.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mentges (German patent 29900194) in view of Ernst (GB patent 1,290,401) as applied to claim 1 above, and further in view of Baumbach (US patent 2,591,331).

The patents to Mentges and Ernst disclose all of the above recited subject matter with the exception of the second scrubbing means having a contoured top surface to follow an arch-shaped contour and the first scrubbing means having a surface being either parabolically or hyperbolically contoured.

The patent to Baumbach discloses a foot brush (fig.1) wherein the second scrubbing means or bristles (16) mounted to an upper surface of the base portion (11) may have a central group of somewhat higher extended bristles (17) to better cleanse the arch of the foot. Such central group together with the remaining bristles forms a contoured top surface. Baumbach thus teaches altering bristle length to provide a contoured cleaning surface to enhance whatever structure is to be cleaned.

It would have been obvious to one of skill in the art to alter the top surface of the second scrubbing means of the modified Mentges device such that it is contoured, as clearly suggested by Baumbach, to enable better cleansing of the arch of the foot.

With respect to claims 16 and 17, based on the teachings of Baumbach, it also would have been obvious to one of skill in the art to provide a contoured surface on the first scrubbing means to likewise enhance the cleaning of the sides of the foot. Baumbach teaches contouring the surface of the second scrubbing means to improve the cleaning effect on the sole of the foot. Such could readily be employed on the first scrubbing means for the same reason. While Baumbach does not disclose particular shapes for the surface, such as parabolic or hyperbolic, such does not appear inventive. One of skill in the art would, by routine experimentation find the optimum surface shape to achieve maximum cleaning. Where the general conditions of the claim are disclosed in the prior art (contoured surface) it is not inventive to discover the optimum shape by routine experimentation. Mere selection of particular shapes for the contour does not appear to produce new and unexpected results which are different in kind and not merely degree from that which is suggested by Baumbach.

Response to Arguments

Applicant's arguments filed 17 November 2007 have been considered but are not persuasive.

Applicant argues that neither Mentges nor Ernst suggest placement of a bar of soap within the base of a foot brush. Such is not persuasive. The fact that the references do not mention one another specifically or specifically suggest the combination does not make improper the combination. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

Applicant also argues that Ernst does not teach biasing soap from the base of the device to extend from the base higher than the bristles, but rather teaches away from the same. Applicant references page 2, column 1, lines 5-13 of Ernst. Such is not persuasive and does not appear accurate. Ernst discusses that a weak spring is used to urge the retaining means towards the functional face of the device so as not to urge the soap with excessive force out of the plane of the functional face to unnecessarily consume said soap. Such does not mean that the soap doesn't come out of the plane of the functional face, only that it doesn't do so with excessive force. The soap must extend higher than the scrubbing means that surrounds it, especially when the soap is new or is a full bar. Otherwise, the entire bar of soap could not be used. Note that Ernst sets forth on page 2, column 1, lines 40-45, that means are provided to prevent the soap from being pressed excessively far out of the apparatus. Applicant's attention is now particularly directed to page 3, column 1, lines 24-30 of Ernst. Therein, Ernst sets forth that "Shoulders 10 are provided on the retaining means 3 which engage in the grooves and, in the inoperative state, about (sic, abut) the collars 8. The

cleansing apparatus is in this condition, i.e. with the spring 5 substantially dimensioned when it is not subjected to the influence of external forces." Thus (looking to figures 1 or 2), in the inoperative state, with the stops means (10,21) engaging abutment (8,22), the soap will extend well past the surface of the bristles. Such is the only way the entire bar of soap can be used as is discussed by Ernst.

Applicant's reference to page 2, column 1, lines 23-25 is noted. However, the examiner would suggest that such, in light of all the above discussion, only means that the bristles and soap are used at the same time, not that the soap cannot or does not extend beyond the bristles. Such only indicates or suggests simultaneous frictioning with soap usage, not of soap extension prior to frictioning. Note that frictioning only occurs when the bristles are in contact with the user's skin. At which point, the soap and bristles will be in the same plane.

Applicant's arguments with respect to claims 15-17 are noted but not persuasive in light of the teachings of Baumbach. As set forth above in the rejection, Baumbach teaches contouring the top surface of the second scrubbing means to enable better cleaning of the arched sole of a user. Further, as set forth above, such teaching can be employed in the first scrubbing means to also enable enhanced cleaning of the sides of a user's foot.

Applicant's argument with respect to the rejection of claim 2 is noted but not persuasive. As set forth above, the figure 1 embodiment of Ernst does not use webs or lands which engage the soap. With the bristles engaging the soap, such will act to prevent or aid in the prevention of sliding of the soap as claimed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary K Graham/

Primary Examiner, Art Unit 3723